



FOI 23-22

25 January 2023

Dale Webster

By email: foi+request-9763-8326d61e@righttoknow.org.au

Dear Ms Webster,

NOTICE OF DECISION MADE UNDER SECTION 23 OF THE FREEDOM OF INFORMATION ACT 1982 (CTH) (FOI ACT) WITH REASONS FOR DECISION PROVIDED UNDER SECTION 26 OF THE SAME

Applicant: Dale Webster

Decision-maker: Astrid (person number 101676), an authorised officer of the Australian Prudential Regulation Authority (**APRA**) for the purposes of subsection 23(1) of the FOI Act.

FOI request: 'I am seeking APRA internal documents (including emails), and also any APRA queries to reporting entities, that constitute consideration by APRA of branch classification errors in the authorised deposit-taking institutions points of presence data (also known as ADIPOP) published by the Australian Prudential Regulation Authority (also known as APRA) concerning:

- Bendigo and Adelaide Bank (also known as Bendigo Bank and Rural Bank) and Rabobank; and

- cashless banks (also referred to as tellerless or digital banks) where customers are directed to ATMs for cash rather than being given face-to-face service,

during the period from 11 May 2021 to 19 October 2022 (being the dates from when the errors were first made public to the release of the 2022 ADIPOP data).'

(FOI request)

My decision: Grant access to one relevant document and refuse access to the remaining relevant documents based on the reasons outlined in this Notice of Decision.

MATERIAL FACTS

1. On 26 December 2022, you made the FOI request by email under the FOI Act.
2. On 3 January 2023, APRA acknowledged receipt of the request by email.
3. On 11 January 2023, APRA issued a Request Consultation Process (Practical Refusal) Notice under section 24AB of the FOI Act.
4. On 12 January 2023, you revised the scope of the request.
5. On 24 January 2023, APRA extended the decision date under section 15AB of the FOI Act until 24 February 2023.

EVIDENCE AND MATERIAL RELIED ON

6. In making my decision, I have relied on the following evidence and material:
 - a. the Applicant's request received by APRA on 26 December 2022;
 - b. the acknowledgment email from the FOI Officer to the Applicant dated 3 January 2023;
 - c. the Request Consultation Process (Practical Refusal) Notice issued by APRA to the Applicant under section 24AB of the FOI Act on 11 January 2023;
 - d. the email from the Applicant to the FOI Officer revising the scope of the request dated 12 January 2023;
 - e. internal APRA email correspondence from 3 January 2023 to 24 January 2023;
 - f. relevant sections of the *Australian Prudential Regulation Authority Act 1998* (Cth) (**APRA Act**);
 - g. relevant sections of the FOI Act; and
 - h. guidelines issued by the Office of the Australian Information Commissioner to date (**FOI Guidelines**).
7. APRA has conducted all reasonable searches of its records and identified 48 documents relevant to your FOI request (**relevant documents**).

REASONS

8. I have decided to grant access to relevant document 3 (as identified in Table 1 in the Document Schedule) on the basis that it is publicly available and to refuse access to the remainder of the relevant documents. My reasons for the refusal are as follows:
 - a. in relation to relevant document 1 (as identified in Table 1 in the Document Schedule): refuse access to the relevant document under section 47C and subsection 47E(d) of the FOI Act;

- b. in relation to relevant document 19 (as identified in Table 1 in the Document Schedule): refuse access to the relevant document under section 42 and subsection 47E(d) of the FOI Act;
- c. in relation to relevant documents 4, 18, 20 – 21 and 23 – 24 (as identified in Table 1 in the Document Schedule): refuse access to the relevant documents under section 42 of the FOI Act; and
- d. in relation to relevant documents 2, 4 – 18 and 20 – 48 (as identified in Table 1 in the Document Schedule): refuse access to the relevant documents under section 38 of the FOI Act and section 56 of the APRA Act.

Deliberative processes

9. Subsection 47C(1)(a) of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency.
10. Paragraph 6.61 of the FOI Guidelines prescribes that a deliberative process may include 'the recording or exchange of opinions, advice, recommendations, a collection of facts or opinions, including the pattern of facts or opinions considered, and interim decisions or deliberations'.
11. Relevant document 1 (as identified in Table 1 in the Document Schedule) contains information that falls within the definition of deliberative matter. The relevant document records opinions, advice and recommendations for the purposes of, and matter relating to consultation and deliberation that has taken place in the course of, deliberative processes of APRA. Paragraph 6.55 of the FOI Guidelines provides that I am not required to consider whether harm would result from disclosure. The information in the document is considered deliberative matter, and is therefore conditionally exempt under section 47C of the FOI Act.

Documents disclosing certain operations of agencies

12. Subsection 47E(d) of the FOI Act conditionally exempts documents where disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of APRA's operations.
13. Paragraph 6.95 of the FOI Guidelines provides that for the exemption to apply, disclosure of the documents would or could reasonably be expected to 'prejudice or have a substantial adverse effect on certain listed agency operations'.
14. Relevant documents 1 and 19 (as identified in Table 1 in the Document Schedule) contain information regarding the operations of APRA. If the relevant documents are released, APRA's ability to perform its operations may become limited and could reasonably be expected to prejudice, or have a substantial adverse effect on the proper and efficient conduct of APRA.
15. In light of the above, I have determined the relevant documents to be conditionally exempt under subsection 47E(d) of the FOI Act.

Application of the public interest test

16. I have reviewed the FOI Act and FOI Guidelines and consider that the following factors favouring the disclosure of relevant documents 1 and 19 (as identified in Table 1 in the Document Schedule) would apply, as disclosure would or could reasonably be expected to:
 - a. promote the objects of the FOI Act; and
 - b. inform debate on a matter of public importance.
17. I also consider that the following factors against release would apply, as disclosure would or could reasonably be expected to:
 - a. inhibit the ability of APRA to provide frank and complete information or advice on similar matters in the future (in the case of relevant document 1, as identified in Table 1 in the Document Schedule); and
 - b. inhibit APRA's ability to perform its operations and have a substantial adverse effect on the proper and efficient conduct of APRA (in the case of relevant documents 1 and 19, as identified in Table 1 in the Document Schedule).
18. I have not taken into account any of the irrelevant factors in subsection 11B(4) of the FOI Act in determining whether access to the relevant documents would, on balance, be contrary to the public interest.
19. I have decided that, on balance, the public interest factors against release outweigh the public interest factors in favour of release of the relevant documents.
20. Extracts of sections 11B, 47C and 47E of the FOI Act are attached to these reasons.

Documents subject to legal professional privilege

21. Section 42 of the FOI Act provides that an agency may refuse a request for access to a document if the document is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
22. Paragraphs 5.127 and 5.129 of the FOI Guidelines require an agency to consider whether:
 - a. there is a legal-advisor client relationship;
 - b. the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation;
 - c. the advice given is independent; and
 - d. the advice given is confidential.
23. I have concluded that the communications in relevant documents 4, 18 – 21 and 23 – 24 (as identified in Table 1 in the Document Schedule) are privileged communications as:
 - a. there was a legal-adviser client relationship;

- b. the communications were for the purpose of giving or receiving legal advice;
 - c. the advice was given from an independent lawyer; and
 - d. the advice given was confidential.
24. Based on the information before me, the relevant documents would be privileged from production in legal proceedings on the ground of legal professional privilege. I have therefore decided to refuse access to the relevant documents under section 42 of the FOI Act.
25. An extract of section 42 of the FOI Act is attached to these reasons.

Secrecy provisions

26. I have determined that relevant documents 2, 4 – 18 and 20 – 48 (as identified in Table 1 in the Document Schedule) are protected documents, and/or contain protected information, as defined in subsection 56(1) of the APRA Act. The relevant documents are consequently exempt under section 38 of the FOI Act.
27. I have taken the following approach in applying section 38 of the FOI Act and section 56 of the APRA Act:
- i. under section 38 of the FOI Act, a document is exempt if disclosure is prohibited under a provision of an enactment and section 38 expressly applies to that provision;
 - ii. subsection 56(11) of the APRA Act expressly applies section 38 of the FOI Act so that any document that is a 'protected document' or contains 'protected information' within the meaning of subsection 56(1) of the APRA Act is also an exempt document under section 38 of the FOI Act;
 - iii. under subsection 56(2) of the APRA Act it is an offence to directly or indirectly disclose protected documents and/or protected information unless a specified exemption applies. This offence provision is binding on me as an APRA staff member. The offence is punishable by up to two years imprisonment;
 - iv. a 'protected document' is defined in subsection 56(1) of the APRA Act to include documents given or produced under or for the purposes of a prudential regulation framework law, and containing information relating to the affairs of a financial sector entity. The *Financial Sector (Collection of Data) Act 2001* is a prudential regulation framework law. The relevant documents were provided or produced and disclosed or obtained under, or for the purposes of, this prudential regulation framework law. Therefore, the document is a protected document unless it is publicly available;
 - v. 'protected information' is defined in subsection 56(1) of the APRA Act to include information disclosed or obtained under or for the purposes of a prudential regulation framework law, and relating to the affairs of a financial sector entity. For the reasons outlined in paragraph (iv) above, information contained in the document is protected, unless it is publicly available; and
 - vi. the information and the documents are not publicly available.

28. Extracts of section 38 of the FOI Act and section 56 of the APRA Act are attached to these reasons.

RIGHTS OF REVIEW

Application for Internal Review of decision

29. Under section 54 of the FOI Act, you have the right to apply for an internal review of the decision if you disagree with my decision. If you make an application for review, another officer of APRA will be appointed to conduct the review and make a fresh decision on the merits of the case.
30. Under section 54B of the FOI Act, you must apply in writing for a review of the decision within 30 days after the day the decision has been notified to you.
31. You do not have to pay any other fees or processing charges for an internal review, except fees and charges applicable for providing access to further material, if any, in the document(s) released as a result of the review (for example, photocopying, inspection, etc).
32. No particular form is required to apply for review, although it is desirable (but not essential) to set out in the application, the grounds on which you consider that the decision should be reviewed.
33. An application for internal review of the decision should be addressed to:
- FOI Officer
Australian Prudential Regulation Authority
GPO Box 9836
Sydney NSW 2001
- Telephone: (02) 9210 3000
Email: foi@apra.gov.au
34. If you make an application for internal review and we do not make a decision within 30 days of receiving the application, APRA is deemed to have affirmed the original decision. However, under section 54D of the FOI Act, APRA may apply, in writing, to the Information Commissioner for further time to consider the internal review.

Application for review by Information Commissioner

35. Under section 54L of the FOI Act, you have the right to apply to the Information Commissioner for a review of the original decision or a review of a decision made on review (amongst other things).
36. Any application must be in writing and must give details of an address where notices may be sent and include a copy of the relevant decision.
37. An application for review by the Information Commissioner may be lodged with one of the following:

Online	Complete and lodge the online FOI review form at: Information Commissioner review - Home (oaic.gov.au)
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Post, email or facsimile	<p>Download and complete the FOI review form and send it by:</p> <p>Post: Director of FOI Dispute Resolution GPO Box 5218, Sydney NSW 2001</p> <p>Email: foidr@oaic.gov.au</p> <p>Facsimile: (02) 9284 9666</p>
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38. More information about making an application for review by the Information Commissioner is available at: [Information Commissioner review - Home \(oaic.gov.au\)](#).

Application for review by Administrative Appeals Tribunal

39. You may be entitled to seek review of the Information Commissioner's decision by the Administrative Appeals Tribunal (**AAT**).
40. The AAT is an independent review body with the power to make a fresh decision. An application fee must usually be paid for an application to the AAT for a review of an FOI decision. Further information is available from the AAT on 1800 228 333.
41. More information about your review rights under the FOI Act is available at: [Part 10 — Review by the Information Commissioner - Home \(oaic.gov.au\)](#).

Complaints to the Information Commissioner

42. You may complain to the Information Commissioner concerning action taken by APRA in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Information Commissioner will conduct an independent investigation of your complaint.
43. More information about your rights to make a complaint, including the manner in which you may do so, is available at: [Make an FOI complaint - Home \(oaic.gov.au\)](#).

Astrid (person number 101676)
FOI Officer
Australian Prudential Regulation Authority

Document Schedule

Document no.	Description	Exemption(s)	Access
1	Exempt document	Sections 47C and 47E(d)	Refused
2	Exempt document	Section 38	Refused
3	APRA holding statement on points of presence revisions	Not applicable	Granted
4	Exempt document	Sections 38 and 42	Refused
5	Exempt document	Section 38	Refused
6	Exempt document	Section 38	Refused
7	Exempt document	Section 38	Refused
8	Exempt document	Section 38	Refused
9	Exempt document	Section 38	Refused
10	Exempt document	Section 38	Refused
11	Exempt document	Section 38	Refused
12	Exempt document	Section 38	Refused
13	Exempt document	Section 38	Refused
14	Exempt document	Section 38	Refused
15	Exempt document	Section 38	Refused
16	Exempt document	Section 38	Refused
17	Exempt document	Section 38	Refused
18	Exempt document	Sections 38 and 42	Refused
19	Exempt document	Sections 42 and 47E(d)	Refused
20	Exempt document	Sections 38 and 42	Refused
21	Exempt document	Sections 38 and 42	Refused
22	Exempt document	Section 38	Refused
23	Exempt document	Sections 38 and 42	Refused
24	Exempt document	Sections 38 and 42	Refused
25	Exempt document	Section 38	Refused
26	Exempt document	Section 38	Refused
27	Exempt document	Section 38	Refused
28	Exempt document	Section 38	Refused
29	Exempt document	Section 38	Refused
30	Exempt document	Section 38	Refused
31	Exempt document	Section 38	Refused
32	Exempt document	Section 38	Refused
33	Exempt document	Section 38	Refused
34	Exempt document	Section 38	Refused
35	Exempt document	Section 38	Refused
36	Exempt document	Section 38	Refused
37	Exempt document	Section 38	Refused
38	Exempt document	Section 38	Refused
39	Exempt document	Section 38	Refused
40	Exempt document	Section 38	Refused
41	Exempt document	Section 38	Refused
42	Exempt document	Section 38	Refused
43	Exempt document	Section 38	Refused
44	Exempt document	Section 38	Refused
45	Exempt document	Section 38	Refused

46	Exempt document	Section 38	Refused
47	Exempt document	Section 38	Refused
48	Exempt document	Section 38	Refused

FREEDOM OF INFORMATION ACT 1982 (CTH)

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
 - (a) an agency; or
 - (b) a Minister; or
 - (c) the Government of the Commonwealth.

Exceptions

(2) Deliberative matter does not include either of the following:

- (a) operational information (see section 8A);
- (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

(3) This section does not apply to any of the following:

- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

47E Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

42 Documents subject to legal professional privilege

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (2) A document is not an exempt document because of subsection (1) if the person entitled to claim legal professional privilege in relation to the production of the document in legal proceedings waives that claim.
- (3) A document is not an exempt document under subsection (1) by reason only that:
 - (a) the document contains information that would (apart from this subsection) cause the document to be exempt under subsection (1); and
 - (b) the information is operational information of an agency.

Note: For **operational information**, see section 8A.

38 Documents to which secrecy provisions of enactments apply

- (1) Subject to subsection (1A), a document is an exempt document if:
 - (a) disclosure of the document, or information contained in the document, is prohibited under a provision of an enactment or a Norfolk Island law; and
 - (b) either:
 - (i) that provision is specified in Schedule 3; or
 - (ii) this section is expressly applied to the document, or information, by that provision, or by another provision of that enactment or law or any other enactment or Norfolk Island law.
- (1A) A person's right of access to a document under section 11 or 22 is not affected merely because the document is an exempt document under subsection (1) of this section if disclosure of the document, or information contained in the document, to that person is not prohibited by the enactment or law concerned or any other enactment or Norfolk Island law.
- (2) Subject to subsection (3), if a person requests access to a document, this section does not apply in relation to the document so far as it contains personal information about the person.
- (3) This section applies in relation to a document so far as it contains personal information about a person if:
 - (a) the person requests access to the document; and
 - (b) disclosure of the document, or information contained in the document, is prohibited under section 503A of the *Migration Act 1958* as affected by section 503D of that Act.

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY ACT 1998 (CTH)

56 Secrecy—general obligations

(1) In this section:

body regulated by APRA includes a body that has at any time been a body regulated by APRA.

court includes a tribunal, authority or person having the power to require the production of documents or the answering of questions.

Financial Regulator Assessment Authority official means an entrusted person within the meaning of the *Financial Regulator Assessment Authority Act 2021*.

financial sector entity has the same meaning as in the *Financial Sector (Collection of Data) Act 2001*.

officer means:

- (a) an APRA member; or
- (b) an APRA staff member; or
- (c) any other person who, because of his or her employment, or in the course of that employment:
 - (i) has acquired protected information; or
 - (ii) has had access to protected documents;other than an employee of the body to which the information or document relates.

personal information has the same meaning as in the *Privacy Act 1988*.

produce includes permit access to.

protected document means a document given or produced (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and containing information relating to the affairs of:

- (a) a financial sector entity; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA or to a registered entity; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA or of a registered entity; or
- (ca) a person in relation to whom information is, or was, required to be given under a reporting standard made in accordance with subsection 13(4A) or (4D) of the *Financial Sector (Collection of Data) Act 2001*; or
- (cb) a person in relation to whom information is, or was, required to be given under Part IIAA of the *Banking Act 1959*;

other than:

- (d) a document containing information that has already been lawfully made available to the public from other sources; or
- (e) a document given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) administered by the Commissioner of Taxation; or

- (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

It also includes a document that is given to APRA under Part 7.5A of the *Corporations Act 2001*, other than a document containing information that has already been lawfully made available to the public from other sources.

protected information means information disclosed or obtained (whether before or after the commencement of this section) under, or for the purposes of, a prudential regulation framework law and relating to the affairs of:

- (a) a financial sector entity; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the *Corporations Act 2001*) to a body regulated by APRA or to a registered entity; or
- (c) a person who has been, is, or proposes to be, a customer of a body regulated by APRA or of a registered entity; or
- (ca) a person in relation to whom information is, or was, required to be given under a reporting standard made in accordance with subsection 13(4A) or (4D) of the *Financial Sector (Collection of Data) Act 2001*; or
- (cb) a person in relation to whom information is, or was, required to be given under Part IIAA of the *Banking Act 1959*;

other than:

- (d) information that has already been lawfully made available to the public from other sources; or
- (e) information given or produced under, or for the purposes of, a provision of the *Superannuation Industry (Supervision) Act 1993*:
 - (i) administered by the Commissioner of Taxation; or
 - (ii) being applied for the purposes of the administration of a provision administered by the Commissioner of Taxation.

It also includes information that is given to APRA under Part 7.5A of the *Corporations Act 2001*, other than information that has already been lawfully made available to the public from other sources.

registered entity means a corporation that is, or has at any time been, a registered entity within the meaning of the *Financial Sector (Collection of Data) Act 2001*.

- (2) A person who is or has been an officer commits an offence if:
 - (a) the person directly or indirectly:
 - (i) discloses information acquired in the course of his or her duties as an officer to any person or to a court; or
 - (ii) produces a document to any person or to a court; and
 - (b) the information is protected information, or the document is a protected document; and
 - (c) the disclosure or production is not in accordance with subsection (3), (4), (5), (5AA), (5A), (5AB), (5AC), (5B), (5C), (5D), (6), (6AA), (6AB), (6A), (7), (7A), (7B), (7C), (7D), (7E) or (7F).

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (3) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purposes of a prudential regulation framework law.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
- (a) is by an employee of the person to whose affairs the information or document relates; or
 - (b) occurs after the person to whose affairs the information or document relates has agreed in writing to the disclosure or production.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) It is not an offence if the disclosure of protected information or the production of a protected document by a person:
- (a) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist a financial sector supervisory agency, or any other agency (including foreign agencies) specified in the regulations, to perform its functions or exercise its powers and the disclosure or production is to that agency; or
 - (aa) occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist the operator of the AFCA scheme (within the meaning of Chapter 7 of the *Corporations Act 2001*) to perform its functions or exercise its powers, and the disclosure or production is to that operator; or
 - (b) is to another person and is approved by APRA by instrument in writing.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (5AA) It is not an offence if the disclosure of protected information or the production of a protected document is made:
- (a) by an officer of an agency to which the information or document has been disclosed or produced under paragraph (5)(a); and
 - (b) for the same purpose as the information or document was so disclosed or produced to that agency.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AA) (see subsection 13.3(3) of the *Criminal Code*).

- (5A) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to the Australian Statistician for the purposes of the *Census and Statistics Act 1905*.

Note: A defendant bears an evidential burden in relation to matters in subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

- (5AB) It is not an offence if the disclosure of protected information or the production of a protected document by a person is for the purpose of APRA complying with any of the following:
- (a) section 55B (ASIC requests);

- (b) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AB) (see subsection 13.3(3) of the *Criminal Code*).

(5AC) It is not an offence if:

- (a) the disclosure of protected information or the production of a protected document is by ASIC, for the purposes of the performance of ASIC's functions, or the exercise of ASIC's powers; and
- (b) the protected information was disclosed previously to ASIC, or the protected document was produced previously to ASIC, for the purpose of APRA complying with any of the following:
 - (i) section 55B (ASIC requests);
 - (ii) section 55D (Notifying ASIC of reasonable belief of material breach of ASIC provisions).

Note: A defendant bears an evidential burden in relation to the matters in subsection (5AC) (see subsection 13.3(3) of the *Criminal Code*).

(5B) It is not an offence if the production by a person of a document that was given to APRA under section 9 or 13 of the *Financial Sector (Collection of Data) Act 2001* is to:

- (a) the Reserve Bank of Australia; or
- (b) another prescribed authority.

Note: A defendant bears an evidential burden in relation to matters in subsection (5B) (see subsection 13.3(3) of the *Criminal Code*).

(5C) If:

- (a) a document is a reporting document given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001*; and
- (b) either:
 - (i) a determination has been made under section 57 that the document does not, or documents of that kind do not, contain confidential information; or
 - (ii) a determination has been made under section 57 that a specified part of the document, or of documents of that kind, does not contain confidential information;

it is not an offence to disclose the document or that part of the document, or any information contained in the document or that part of the document, to any person (including by making the document, the part of the document or the information available on APRA's website).

(5D) It is not an offence if the production by a person of a document that was given to APRA under section 13 of the *Financial Sector (Collection of Data) Act 2001* is to the Commissioner of Taxation for the purposes of the *Major Bank Levy Act 2017* (including the administration of that Act).

Note: A defendant bears an evidential burden in relation to matters in subsection (5D) (see subsection 13.3(3) of the *Criminal Code*).

(6) It is not an offence if the disclosure of protected information or the production of a protected document is to:

- (a) an APRA member; or
- (b) an APRA staff member;

for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or a Territory.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (6AA) It is not an offence if the disclosure of protected information or the production of a protected document is to a Financial Regulator Assessment Authority official for the purposes of the performance of the Financial Regulator Assessment Authority's functions or the exercise of the Financial Regulator Assessment Authority's powers.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6AA) (see subsection 13.3(3) of the *Criminal Code*).

- (6AB) It is not an offence if:

- (a) the disclosure of protected information or the production of a protected document is by a person who is or has been a Financial Regulator Assessment Authority official; and
- (b) the person acquired the information or accessed the document in the course of the person's duties in relation to the Financial Regulator Assessment Authority.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (6AB) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: Division 3 of Part 4 of the *Financial Regulator Assessment Authority Act 2021* deals with disclosure of information by Financial Regulator Assessment Authority officials.

- (6A) It is not an offence if the disclosure of protected information or the production of a protected document is to:

- (a) an auditor who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC; or
- (b) an actuary who has provided, or is providing, professional services to a general insurer, authorised NOHC or a subsidiary of a general insurer or authorised NOHC;

and the disclosure is for the purposes of the performance of APRA's functions, or the exercise of APRA's powers, under a law of the Commonwealth or of a State or Territory.

- (7) It is not an offence if the information, or the information contained in the document, as the case may be, is in the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (7A) It is not an offence if the information, or the information contained in the document, as the case may be, is all or any of the following:

- (a) the names of bodies that are regulated by APRA;
- (b) the addresses at which bodies referred to in paragraph (a) conduct business;

- (c) any other information that is reasonably necessary to enable members of the public to contact persons who perform functions in relation to bodies referred to in paragraph (a).

Note: A defendant bears an evidential burden in relation to the matters in subsection (7A) (see subsection 13.3(3) of the *Criminal Code*).

- (7B) It is not an offence if the information, or the information contained in the document, as the case may be, is:
 - (a) a statement of APRA's opinion as to whether or not a body regulated by APRA is complying, or was complying at a particular time, with a particular provision of a prudential regulation framework law; or
 - (b) a description of:
 - (i) court proceedings in relation to a breach or suspected breach by a person of a provision of a prudential regulation framework law; or
 - (ii) activity engaged in, or proposed to be engaged in, by APRA in relation to such a breach or suspected breach; or
 - (c) a description of action under a prudential regulation framework law that APRA has taken or is proposing to take in relation to:
 - (i) a body regulated by APRA; or
 - (ii) an individual who holds or has held a position with or in relation to such a body.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7B) (see subsection 13.3(3) of the *Criminal Code*).

- (7C) If information referred to in subsection (7A) or paragraph (7B)(a) that relates to a body that is, or has at any time been, regulated by APRA under the *Superannuation Industry (Supervision) Act 1993* is disclosed to the Registrar of the Australian Business Register established under section 24 of the *A New Tax System (Australian Business Number) Act 1999*, the Registrar may enter the information in that Register.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7C) (see subsection 13.3(3) of the *Criminal Code*).

- (7D) It is not an offence if:
 - (a) the disclosure of protected information or the production of a protected document is to an ADI (within the meaning of the *Banking Act 1959*); and
 - (b) the information, or the information contained in the document, as the case may be, is information contained in the register kept under section 37H of the *Banking Act 1959*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7D) (see subsection 13.3(3) of the *Criminal Code*).

- (7E) It is not an offence if:
 - (a) the disclosure of protected information or the production of a protected document is to an individual; and
 - (b) the information, or the information contained in the document, as the case may be, is only personal information about the individual; and
 - (c) the information, or the information contained in the document, as the case may be, is information contained in the register kept under section 37H of the *Banking Act 1959*.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7E) (see subsection 13.3(3) of the *Criminal Code*).

- (7F) It is not an offence if:
- (a) the disclosure of protected information or the production of a protected document is by APRA; and
 - (b) the information, or the information contained in the document, as the case may be, is information that discloses:
 - (i) whether a person is disqualified under section 37J of the *Banking Act 1959*; or
 - (ii) a decision made under Subdivision C of Division 6 of Part IIAA of that Act, or the reasons for such a decision.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7F) (see subsection 13.3(3) of the *Criminal Code*).

- (8) A person who is, or has been, an officer cannot be required to disclose to a court any protected information, or to produce in a court a protected document, except when it is necessary to do so for the purposes of a prudential regulation framework law.
- (8A) However, subsection (8) does not prevent a person who is, or has been, a Financial Regulator Assessment Authority official from being required to disclose, or produce a document containing, protected information (within the meaning of the *Financial Regulator Assessment Authority Act 2021*) when it is necessary to do so for the purposes of that Act.
- (9) If a person discloses information or produces a document under this section to another person, the first person may, at the time of the disclosure, impose conditions to be complied with in relation to the information disclosed or the document produced.
- (9A) Subsection (9) does not apply if the information is disclosed, or the document is produced, in accordance with subsection (6AA) or (6AB).
- (9B) Subsection (9) does not apply if the information is disclosed, or the document is produced, in accordance with subsection (5AB) or (5AC).
- (10) A person commits an offence if the person fails to comply with a condition imposed under subsection (9).

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (11) A document that:
- (a) is a protected document; or
 - (b) contains protected information;
- is an exempt document for the purposes of section 38 of the *Freedom of Information Act 1982*.

Note: For additional rules about personal information, see the *Privacy Act 1988*.

- (12) A disclosure of personal information is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6 if:
- (a) the information is protected information and the disclosure is made in accordance with any of subsections (4), (5), (5AA), (5AB), (5AC), (6), (6AA), (7A), (7B), (7C), (7D), (7E) and (7F); or

- (b) the information is contained in a protected document and the disclosure is made by the production of the document in accordance with any of those subsections.